United Nations A/HRC/29/28/Add.4

General Assembly

Distr.: General
15 May 2015

English only

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Addendum

Comments by the Republic of Azerbaijan*

* Reproduced as received.

GE.15-09908 (E)
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Comments of the Government of the Republic of Azerbaijan regarding the advance unedited version of the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Azerbaijan (18-27 August 2014)

As to paragraph 6:

To reflect the second sentence as follows:

"Estimated population of Azerbaijan at present is 9.7 million. There are 66 districts in Azerbaijan, 77 cities, 13 urban districts, 257 settlements, 1719 rural territorial districts, 4260 villages."

The words "four-tiered court system" in sixth sentence of this paragraph shall be replaced with the words "three-tiered court system";

As to paragraph 7:

Number of refugees should be mentioned as "hundreds of thousands" instead of "thousands".

As to paragraph 9:

To reflect the second sentence as follows:

"In 2014, oil and gas sector made up 39 percent of the GDP; oil, oil products natural gas and electricity made up 92 percent of the exports of Azerbaijan; oil sector made up 65 percent of state budget revenues."

As to paragraph 10:

"In 2014, the poverty level in Azerbaijan declined by 5 percent. The average monthly nominal wage of workers in the economy of Azerbaijan made 444.3 AZN."

As to paragraph 11:

Gender inequality is not high in Azerbaijan. Gender equality is fully ensured in education sector. According to the UNDP Human Development report 2014 Azerbaijan ranked 62th among 186 countries for gender inequality and gender inequality index amounted to 0.0340.

As to paragraph 12:

Unemployment rate was 9.2%, 5.0% and 4.9% in 2003, 2013 and 2014, accordingly.

As to paragraph 15:

With regard to the first sentence: Replace the word "a number" with "a wide range"; With regard to the second sentence: delete "nobody must be" and add "no shall be", give the word "torture" in singular. Please take this comment into consideration: "It is not clear why paragraph 15 mentions only a few of the broad catalog of human rights contained in the Constitution."

As to paragraph 21:

To be expected: The Office of the Commissioner for Human Rights (the Ombudsman) is another example of new attention being given to business and human rights issues. **The Ombudsman's Annual Reports just from the beginning provide the information on**

the activities of the Ombudsman in the field of employment, labor rights, property rights, right to live in healthy environment and in general the activities for the promotion of civil, economic, social and cultural rights. Since its 2013 edition, annual report of the Ombudsman includes a special section on "Business and human rights", referring to activities undertaken in this area, including discussions with relevant Government authorities, the National Confederation of Trade Unions and Confederation of Entrepreneurs (Employers') Organizations, and civil society organizations. Also, in the same year, the Ombudsman facilitated the establishment of a working group composed of relevant State bodies and non-governmental organizations. The Commissioner systematically works towards the implementation of the "Guiding Principles on Business and Human Rights". At the initiative of the Ombudsman, this important document was translated into Azerbaijan language by the Ombudsman Office and distributed to the members of the Working Group and civil society organizations. The Working Group welcomes these and other such initiatives that provide a clear opportunity for greater awareness and inclusion of the human rights agenda in national development.

As to paragraph 34-36:

Reference is made in these paragraphs to the information that representatives of civil society organizations, human rights defenders, and journalists have suffered harassment, intimidation or arrest.

In connection with this it should be taken into account that wide opportunities for independent work are created for human rights defenders, representatives of civil society organizations operating in the Republic of Azerbaijan in various spheres as well as mass media, the full amount of their rights and freedoms are guaranteed, they are not subjected to harassment, intimidation and criminal prosecution in connection with their activity. Only persons suspected of a specific crime shall be prosecuted in the manner prescribed by law and, in this case, regardless of official position, belief, belonging to political parties, trade unions and other public associations, and other circumstances the principle of equality of all before law is fundamental.

It should be noted for information that there is a stable system of partnership relations between the government agencies and NGOs in our country. As an example it is possible to show the Public Committee that has been carrying out the public control over Penitentiary system for a long period of time and whose members are representatives of civil society organizations, human rights defenders.

At the same time the Law "On public participation" which is directed to the participation of citizens in governing of the state and carry out the public control over the activities of state bodies entered into force in June 2014. Authorities of the Public Committee have been expanded in relation with this Law; members of the Committee take an active part in different spheres of justice activity.

As to paragraph 37 (Activity of the Joint Working Group on human rights issues):

Activity of the Joint Working Group on human rights issues was restored in October 2014 by the initiative of the head of the state and the Secretary General of the Council of Europe (before this the Group was operated in 2005-2008). Representatives of state bodies and NGOs operating in the field of human rights protection conduct joint consultations and discussions under open and constructive dialogue; give recommendations to the agencies that have authority to make a decision related to the cases of persons whose rights have been probably violated.

Activity of the group is recognized as a valuable and reliable mechanism for the dialogue, this group is a unique model for other European countries.

As to paragraph 38-40 (Several civil society organizations operating in the field of human rights face difficulties with registration, their bank account are frozen, they suspend their activity):

The analysis of the activity of non-governmental organizations shows that the development of civil society institutions is the focus of attention in our country. According to the indicators of 2014, 3021 non-governmental organization were registered (more than 315 are operating in the field of human rights). According to the current legislation non-governmental organizations can operate without registration.

It should be noted that, according to the Presidential Decree dated November 20, 2013, which plays an important role in providing electronic services for NGOs, Ministry of Justice established "Individual electronic window" electronic information system. This system has been put into operation.

"Individual electronic window" is the information system which provides mutual exchange of information between NGOs with government agencies, issuance of information determined by law and reports in electronic form, and other electronic services. This system covers the creation of "personal electronic cabinet" for NGOs, receiving and responding of the documents in electronic form related to their activities, electronic registration of documents related to allocation and giving grants as well as other functions.

It should be noted that on the basis of proposals prepared by taking into consideration the decisions of the European Court of Human Rights and recommendations of the European Commission for Democracy through Law of the Council of Europe (Venice Commission) amendments were made to Laws "on Non-governmental organizations (social unions and foundations)", "on State registration and state registry of legal persons", "on Grants", "on Fight against legalization of money or other property obtained through criminal activity and terrorism financing", as well as the Administrative Offences Code in November 17, 2013. Issues of the appeal to the court on suspension of the activity of NGOs by their members whose rights are violated, relating the branches and representative offices of foreign NGOs to monitoring entities on money laundering, involvement of NGOs to the study of the activities of NGOs, inadmissibility the implementation of activity on the basis of unregistered changes in the state registry of legal entities have been reflected within the framework of these amendments.

Also the main purpose of the changes to legislation made in October 17, 2014 was elimination of gaps in legislation related to financing of NGOs, strengthening the national donor institutions, to assist grant allocated by donors in directing to the real needs, and to increase transparency in the process of using the funds received from foreign sources.

Currently, the work is being carried out on improvement of legislation regulating the registration of contracts on reception of grants. In this regard, the Ministry of Justice has prepared the projects and submitted to the relevant authorities.

Public discussions were held in 2014 in relation with all amendments made to the Laws "on Non-governmental organizations (social unions and foundations)", "on State registration and state registry of legal persons", "on Grants" with the view of improvement of legislation in sphere of NGO.

It should be taken into account that according to the Article 16.4 of the Law "on Non-governmental organizations (social unions and foundations)" non-governmental organizations and the branches and representative offices of foreign non-governmental organizations can apply to the relevant executive body in connection with the temporary

suspension of their activities. Based on this article, organizations are able to suspend their activities voluntary in any time. The cases of the suspension the activities of organizations are not related with the amendments to the legislation.

Also according to the legislation the Ministry of Justice does not have authority to freeze bank accounts of the organizations.

As to paragraph 48:

... Also, the establishment in 2012 of the "Azerbaijani Service and Assessment Network" (ASAN Service) that provides citizens with access to a range of public and private services through dedicated ASAN Service centres and mobile ASAN buses, was a result of comprehensive reforms in Azerbaijan aimed at the total eradication of petty corruption across the public administration and at ensuring the transparent and efficient delivery of public services to the citizens.

As to paragraphs 72-80:

Currently, a half of women in Azerbaijan are in salaried employment and disparity between the incomes of men and women are likely to continue to decrease in the near term.

According to official statistics, the number of paid workers in Azerbaijan as of January 1, 2014 is 1.514 mln. persons.

One of the most important aspects for creation of the Electronic Information System (EIS) under "E-Government Portal" is to ensure the signing of labor contract between the employer and employee, unidentified as being involved in to illegal labor relations.

As of April 2015, 1.270 mln. labor contract notifications were registered.

Given the above, we would like to notify that there is no data on illegal employment in the official statistics of the country.

With regards to the paragraph 1 of the "E. Labor Rights" section of the report we would like to inform that in accordance with the Article 16 of the Labor Code of the Republic of Azerbaijan, enacted on June 1, 1999 no discrimination among staff members is allowed in labor relations based on citizenship, gender, race, religion, place of living, property status, public-social origin, age, family status, beliefs, political views, participation in trade unions or any other public unions, service status,, as well as business qualities of a staff member, professional qualifications or any other factors not related to results of labor, as well as direct or indirect concessions and privileges and limitation of rights on such grounds are strictly prohibited. Any employer or a private individual allowing for such discrimination in the process of labor relations as indicated in the article is subject to account envisaged by the legislation. Staff member, whose rights had been violated may claim rehabilitation of rights through court.

Convention No.100 "On Equal Remuneration for Men and Women", No.111 "On Discrimination in the Field of Labor and Employment" play an important role in the row of ILO documents. Reports on implementation of relevant liabilities, emerging from such international documents are regularly being developed and submitted to relevant international organizations.

In accordance to the Law on "Living Minimum" for the purpose of defining the targeted social assistance the criteria of needs for 2015 was approved at the level of 105 manat. Currently the national minimal wage is 105 manat.

The criterion of needs for the country is the criterion, renewed every year along with the state budget, to define the targeted social assistance for main social-demographic groups based on the minimum living standard.

As to paragraph 83:

To add "no law enforcement exists at the Municipal level."

As to paragraph 85:

To be expected: As the Working Group learned from its meeting with the Ombudsman, in 2013 the institution, including four regional centers, received 13,670 appeals. 75,8 % of them were complaints and 24,2 % appeals. 52,4% of complaints could not be examined according to the Constitutional Law, which states that if a complaint is out of the Commissioner's competence and more than a year has passed since the date when the case of human rights violation occurred; a complaint is anonymous; a complaint is being examined within court proceedings; repeatedly submitted petitions does not contain any new information, fact and evidence. 47,6% of the complaints were accepted for examination and 65,5% of them were resolved. The complaints dealing with violations of civil, economic and social rights typically concerned delivery of ID cards, registration, responding to information queries, plots of land, property, apartment, also damages caused by natural disasters, pensions and allowances, targeted social aids, restoration at the work place, executing of the court decisions, appeals dealing with payment of alimony and loans (The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Annual Report for 2013, p. 5-6)

As to paragraph 86:

Remarks: According to the Article 1.1 of the Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan the position of the Human Rights Commissioner of the Republic of Azerbaijan was set up to restore the human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party, violated by governmental and municipal bodies and officials of the Republic of Azerbaijan and to prevent violation of human rights in cases envisage by the Constitutional Law.

As stated in the Constitutional Law, Ombudsman is not powered to handle complaints about business stakeholders. Although, since the beginning of her term the Commissioner has closely cooperated with the competent state authorities in order to investigate the complaints about the business stakeholders as well as to eliminate the violations. Often such violations are resolved. The main goals of the establishment of the Working Group on Business and human rights by the Ombudsman are to promote increasing corporative social responsibility of business before the society and working staff, regulating the employer-worker relations in the labor sphere and ensuring social dialogue, as well as to make efforts for ensuring human rights in this sphere through learning the problems existing and working out the relevant proposals, effectively organize and strengthen cooperation with the competent state authorities, to coordinate and improve the appropriate activities. Thus, at the meetings of the Working Group the discussions are held on the measures undertaken by the state agencies particularly and jointly with the Office of the Ombudsman in the sphere of restoration of human rights violated by business organizations, the proposals and recommendations regarding improvement of the activity in this direction are heard. Generally, from the beginning of the activity of the WG the discussions have been held on such topics as "Child Rights and Business", "Observing Ecological Requirements in realization of business", "Business and Women's Rights", "Protection of rights of persons with disabilities from the context of business and human rights" and other.

During these meetings the members of the Working Group are also given concerning information by the Ombudsman Office about the international legal documents

existing in "Business and Human Rights" sphere, as well as about the events of international importance where the Ombudsman of Azerbaijan and the representatives of the Office took participation.

The state authorities which the Ombudsman cooperates with in this field and the Ombudsman Office have own 24 hour hot-lines. In addition, if it is necessary the Rapid Response Group of the Ombudsman conducts monitoring with the relevant state authorities on the spot.

Within her term in office, the statistics of the applications on business and human rights and dealt with the civil, economic, social and cultural rights addressed the Ombudsman have been included to her Annual Reports. For example, in 2013, the Commissioner received 709 applications on the labor rights, 2.257 on the property rights, 1084 on the right to house, 1.501 on the enforcement of the right to fair trial, 697 on non-execution of court sentences, 587 regarding the right to health and etc.(The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Annual Report for 2013).

Except the above shown, the Ombudsman during her term put forward over 460 proposals, including about business and human rights and 60 percent out of them have been implemented.

As to paragraph 95:

(h) Expand the number of ASAN Service centres to ensure the accessibility of all citizens to public services.

At the same time, the report makes notes of such cases as illegal expropriations, evictions, demolitions and non-provision of fair compensation in paragraphs 70-71 and 95 (item "i"). In this regard, it should be mentioned that since issues like state acquisition of lands in the country, assessment of related costs and payment of compensation are governed by the Law of the Republic of Azerbaijan on "State acquisition of lands" and relevant regulations approved by the Cabinet of Ministers of the Republic of Azerbaijan, it is recommended to revise the noted issues in the report.